

**OFFICE OF TAX APPEALS**  
**STATE OF CALIFORNIA**

In the Matter of the Appeal of:

**C. HENCH**

) OTA Case No. 21108769  
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**OPINION**

Representing the Parties:

For Appellant:

C. Hench

For Respondent:

Brian Werking, Tax Counsel III

For Office of Tax Appeals:

Nguyen Dang, Tax Counsel III

T. STANLEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, C. Hench (appellant) appeals an action by respondent Franchise Tax Board (FTB) proposing additional tax of \$1,616 plus applicable interest for the 2017 taxable year.

Appellant elected to have this appeal determined pursuant to the procedures of the Small Case Program. Those procedures require the assignment of a single administrative law judge. (Cal. Code Regs., tit. 18, 30209.1.) Because appellant waived the right to an oral hearing, the Office of Tax Appeals (OTA) decides the matter based on the written record.

**ISSUE**

Has appellant shown error in FTB’s proposed assessment?

### FACTUAL FINDINGS

1. During the 2017 taxable year appellant provided metal fabrication services.
2. Appellant did not report any income from this activity on his 2017 federal or state income tax returns.
3. FTB later obtained information from the IRS indicating that it had revised appellant's federal adjusted gross income to include \$20,822 of nonemployee compensation paid to appellant during the 2017 taxable year from four separate payors.
4. Based on this federal adjustment, FTB issued to appellant a Notice of Proposed Assessment (NPA) for \$1,616 additional tax plus applicable interest for the 2017 taxable year.
5. Appellant protested the NPA, and FTB issued a Notice of Action affirming its NPA. This timely appeal followed.
6. On appeal, appellant provided invoices for the 2017 taxable year showing total gross receipts of \$54,677.62 from his metal fabrication services.
7. FTB determined from these invoices that appellant had failed to report an additional \$33,855.62 (\$54,677.62 - \$20,822.00) of income.
8. Relying upon 2017 expense statistics from BizStats for the "Fabricated Metal Product Manufacturing" industry, FTB estimated that appellant paid expenses equal to 68.23 percent of his gross receipts, or \$37,307.
9. After accounting for the additional unreported income and the estimated expense deduction, FTB concedes to reduce the proposed additional tax from \$1,616 to \$1,291.

### DISCUSSION

Appellant does not dispute the receipt of income from his metal fabrication activities. Rather, appellant argues that his metal fabrication activities were a side gig which he did not engage in for profit. Appellant maintains that he provided metal fabrication services for his friends, whom he only invoiced for the cost of materials. Therefore, because the income he

received was wholly offset by the expenses paid, appellant asserts there should be no increase to his tax liability for the 2017 taxable year.

Appellant is correct that “ordinary and necessary” expenses paid by an individual in an activity not engaged in for profit (e.g., a hobby) are deductible only to the extent of any income received from such activity. (R&TC, § 17201(a), incorporating Internal Revenue Code, §§ 162, 183.) It is undisputed that appellant paid ordinary and necessary expenses for the 2017 tax year in connection with his metal fabrication activities. Therefore, the only remaining issue is the amount of these expenses.

It is well established that taxpayers bear the burden of providing credible evidence to substantiate their claimed deductions. (*Appeal of Vardell*, 2020-OTA-190P.) Unsupported assertions are insufficient to meet this burden, and a taxpayer’s failure to provide evidence that is within his or her control gives rise to a presumption that such evidence, if provided, would be unfavorable. (*Ibid.*)

Appellant’s invoices show only the amounts his customers paid for various items, such as “Triangle Seating,” “Circle Cut Out Shapes,” and “Discs.” There is no indication on the face of these invoices that the amounts paid by appellant’s customers were solely for material costs. Appellant did not provide purchase invoices or other evidence from which his metal fabrication or material expenses may be reasonably determined. Although FTB was not required to do so under these circumstances, it made a good faith attempt to estimate appellant’s expenses using publicly available industry data. If that estimate was not to appellant’s satisfaction, the inexactitude is a direct consequence of his failure to properly document those expenses as required by law.


Based on the foregoing, OTA concludes that appellant is not entitled to an expense deduction greater than that allowed by FTB on appeal.

HOLDING

Appellant has not shown error in FTB’s proposed assessment.

DISPOSITION

FTB’s action is modified to reflect its concession on appeal to reduce the proposed additional tax to \$1,291. Otherwise, FTB’s action is sustained.

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Teresa A. Stanley  
Administrative Law Judge

Date Issued: 10/20/2022